# TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 715

THE UNITED STATES OF AMERICA, PETITIONER

vs.

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE OF J. F. ANDREW, DECEASED

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

PETITION FOR CERTIORARI FILED FEBRUARY 10, 1940

CERTIORARI GRANTED MARCH 25, 1940

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1939

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA**

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1 IN COUNTY JUDGE'S COURT IN AND FOR POLK COUNTY, FLORIDA

In re: Estate of Joseph F. Andrew, Deceased

*Ancillary Letters of Administration*

Filed Aug. 11, 1937

*To all to whom these presents shall come, Greetings:*

Whereas, Joseph F. Andrew, deceased, late of the County of Monmouth, State of New Jersey, died intestate, having while he lived and at the time of his death an estate consisting of various assets located in the State of Florida; and

Whereas, I, the undersigned County Judge, appointed Arlene Summerlin, as ancillary administratrix of the estate of said deceased on the 2nd day of August, 1937.

Now, therefore, I, C. M. Wiggins, County Judge in and for the County aforesaid, desiring that the estate of said deceased may be well and truly administered according to law, do hereby grant unto Arlene Summerlin, as ancillary administratrix of said estate of said deceased; to ask, demand, sue for, recover and receive the same, and to pay the debts of said estate as far as the assets will extend and otherwise administer the estate according to law, as said administratrix has given bond and security and taken oath and performed all necessary acts required by law and by the orders of this Court to qualify as ancillary adminis-

2 tratrix of said estate, letters of administration are therefore issued to her as an evidence of her authority under the laws of Florida and orders of this Court to act as ancillary administratrix of said estate of said deceased.

In testimony whereof, the undersigned County Judge has hereunto set his hand and affixed his seal of said office this 11th day of August 1937.

[SEAL] C. M. WIGGINS,
*County Judge,*
*In County Judge's Court of Polk County.*

*Proof of publication of notice to creditors. Filed Sept. 6, 1937*

On this day personally appeared before me, the undersigned notary public, George L. Burr, Jr., to me well known, who, being by me first duly sworn, deposes and says that he is the publisher of The Winter Haven Herald, that said Winter Haven

Herald is a newspaper of general circulation published
3 weekly in the City of Winter Haven, Polk County, Florida; that said newspaper has been published in accordance with the provisions and requirements of Chapter 14830, Acts of the Legislature of the State of Florida of 1931, approved May 20, 1931; and that the attached notice to creditors was published in said newspaper once each week for a period of 3 consecutive weeks, in the issues of said newspaper published on the following dates, to wit: Aug. 13, 20, 27, & Sept. 3, A. D. 193—.

GEO. L. BURR, Jr.

Sworn to and subscribed before me, this 3rd day of September, A. D. 1937.

[SEAL] DONALD McDONALD,
*Notary Public, State of Florida at Large.*

My Commission Expires Dec. 17, 1937.

(Attached Notice to Creditors)

*Notice to creditors*

In Court of the County Judge of Polk County, Florida

In re Estate of Joseph F. Andrew, Deceased

*To All Creditors and Persons Having Claims or Demands Against Said Estate:*

You, and each of you, are hereby notified to file all claims and demands which you have against the estate of Joseph F. Andrew, deceased, in the office of C. M. Wiggins, County Judge, at his office in the Court House at Bartow, Florida, within eight
4 calendar months from August 13, 1937, which is the date of the first publication of this notice. Each claim or demand must be in writing, must state the place of residence and post office address of the claimant, must be sworn to and must be filed as aforesaid, or else the same will become void.

ARLENE SUMMERLIN,
*Ancillary Administratrix.*

A. SUMMERLIN,
*Attorney for Ancillary Administratrix.*

Aug. 13, 20, 27, Sept. 3.

In County Judge's Court of Polk County in Probate

In re: Estate of J. F. Andrew, Deceased

*Petition and proof of claim*

Filed July 1, 1938

Comes now the United States of America by its undersigned attorneys and respectfully represents unto the Court the following: That on or about March 19, 1935, J. F. Andrew, then living, executed and delivered to W. B. Craig his promissory note for the principal sum of Eight Hundred Thirty-nine and 86/100 ($839.86) Dollars, which note was payable in thirty-six (36) equal consecutive monthly installments beginning one month after the date thereof; that thereafter for value and before maturity the said note was duly transferred and assigned in due course to the Federal Housing Administrator, acting for and on behalf of the United States of America; that the United States of America then and thereby became the owner and holder in due course of said promissory note; that thereafter and before the said note was paid in full the maker thereof, J. F. Andrew, departed this life and one Arlene Summerlin has by this Honorable Court been appointed Ancillary Administratrix of the estate of the said J. F. Andrew.

Your petitioner further represents unto the Court that the Estate of the said J. F. Andrew is now indebted to your petitioner on the above described promissory note in the amount of Five Hundred Twenty-five and 19/100 ($525.19) Dollars, together with interest thereon at the rate of Six (6%) Per Cent per annum from August 21, 1936.

Your petitioner attaches hereto proof of the above described claim, properly executed, on behalf of the United States of America, and prays that the same be considered as a part of this petition.

Your petitioner further represents unto the Court that the above described claim, proof of which is attached thereto, is a debt due and owing the United States of America within the meaning of section 191 and Section 192 of Title 31, U. S. C. A., and that the same is, therefore, a preferred claim against the Estate of the said J. F. Andrew, deceased, and that Section 5541 (92) Compiled General Laws of Florida, fixing the time within which claims against the estates of decedents must be filed, does not apply to claims in favor of the United States.

Your petitioner, therefore, prays that this Honorable Court enter an order allowing the filing of the attached claim of the United States against the estate of J. F. Andrew, deceased, and declare the same to be a preferred claim against said estate.

H. S. PHILLIPS,
*United States Attorney.*
JOSEPH E. GILLEN,
*Assistant United States Attorney.*

(Attached Proof of Claim)

In the Matter of J. F. Andrew, Deceased

*Proof of claim of the United States of America, entitled to priority of payment under title 31, chapter 6, section 191 of the United States Code*

DISTRICT OF COLUMBIA, *ss:*

In the cause aforesaid comes Perry M. Armstrong and makes oath and says that he is attorney of the Federal Housing Administrator, acting on behalf of the United States, and is authorized to make this deposition; that J. F. Andrew, deceased, is, and was at and before his/her death, justly and truly indebted to
7 the United States of America in the principal sum of Five hundred twenty-five and 19/100 Dollars ($525.19) with interest thereon at the rate of six per centum (6%) per annum from August 21, 1936; that the consideration for the said debt is as follows:

Under the provisions of Title I of the National Housing Act, approved June 27, 1934 (48 Stat. 1246), there was created the Federal Housing Administration as an instrumentality of the United States to carry out the provisions of said Act and all the powers of said Administration were, under the provisions of said Act, directed to be exercised by a Federal Housing Administrator with authority in said Administrator to delegate any of such powers to such agents as he might designate; that among such powers conferred on said Administrator by said Act, or amendments thereto, was the power to insure, upon such conditions as he might prescribe, banks, trust companies, personal finance companies, mortgage companies, building and loan associations, installment lending companies, and such other financial institutions, as the Administrator should find to be qualified by experience or facilities, and should approve as eligible for credit insurance, against certain losses which they might sustain as a result of loans and advances of credit, and purchases of obligations representing loans and advances of credit, made by them subsequent to

the enactment of said Act and prior to April 1, 1937, for the purpose of financing alterations, repairs, improvements and additions upon real property and the purchase and installation of equipment and machinery on real property; that one Stewart McDonald has been duly appointed Federal Housing Administrator and is at the date hereof acting as such Administrator pursuant to such appointment; that said Administrator, pursuant to such power, on the tenth day of August 1934, did so insure Johns-Manville Credit Corporation against losses which it might sustain as the result of loans, advances of credit, or purchases of obligations representing loans and advances of credit made by it for the aforesaid purposes; that on April 11, 1935, the said Johns-Manville Credit Corporation, pursuant to the aforesaid contract of insurance issued to it, and under conditions prescribed by the Administrator in the form of regulations adopted by said Administrator, became the holder of a note of said debtor, a certified copy of which is attached hereto, representing an indebtedness in the amount of Eight hundred thirty-nine, 86/100 Dollars ($839.86), and duly reported the same to the Administrator for insurance, whereupon the United States, in accordance with the contract of insurance aforesaid, became responsible for the payment of said indebtedness in the event that the said debtor should fail to pay the same under the provisions of regulations numbered 15 and 17 duly adopted by the Administrator and which are as follows:

8

Regulation No. 15

(Applicable to all loans)

Claim for reimbursement for loss on a qualified note may be made to the Administrator at any time after payment of such note has been in default for a period of 60 days. The Administrator in his discretion may at any time or from time to time call for a report from any insured institution on the delinquency status of the obligations held by such institution and reported to him for insurance.

9

If within the first year after default the borrower has not made payments on his obligation aggregating at least 10 percent of the balance due on the date of default, claim must be made within 30 days thereafter. If in any subsequent 6-month period the borrower has not made payments aggregating at least 5 percent of the unpaid balance as of the beginning of such period, claim must be made within 30 days thereafter.

Regulation No. 17

(Applicable to all loans)

Claims must be made on the proper form, which must be filled out completely and executed in duplicate by a duly qualified officer of the insured institution. If the Regulations have been complied with, payment of the loss incurred will be made upon audit of the claim and upon proper endorsement to the Administrator of the note upon which the loss occurred. If judgment has been taken, assignment of the judgment must be made.

That on April 19, 1936, a balance of Five hundred fourteen and 70/100 Dollars ($514.70) being then due on said indebtedness, the said debtor defaulted in the payment thereof; that on July 30, 1936, Johns-Manville Credit Corporation duly made claim upon said Administrator for the payment to it of said balance of such indebtedness in accordance with the terms of its contract of insurance with said Administrator; that on August 21, 1936, the Administrator, representing the United States, after having audited said claim, found that there was justly due said Johns-Manville Credit Corporation, New York, N. Y., the sum of Five hundred twenty-five and 19/100 Dollars ($ ), and paid said claim by draft on the Treasurer of the United States, as he was obligated to do under the aforesaid contract of insurance; and as the result of such payment said debt and all security therefor was assigned to the United States, whereupon the said debtor became indebted to the United States in the amount above set forth; that no part of said debt has been paid; that there are no set-offs or counterclaims to same, except: None and that the only securities held for such debt are as follows: Note dated March 19, 1935, in amount of $839.86, payable to and endorsed by W. B. Craig, and signed by J. F. Andrew; Proof of Claim executed against the estate of J. F. Andrew by the Johns-Manville Credit Corp. on June 29, 1936.

, said securities having been duly assigned to the United States of America.

Deponent further says that the said Administrator, pursuant to the powers conferred upon him by said National Housing Act, has delegated to deponent the power to execute in his name this proof of claim because of the fact that, owing to his many other administrative duties, it is impossible for him personally to know the facts necessary to execute this proof of claim.

Deponent further says that this claim is entitled to priority of payment under Title 31, Chapter 6, Section 191 of the United States Code as a debt owing to the United States.

THE UNITED STATES OF AMERICA,
Creditor,

By STEWART McDONALD,
Federal Housing Administrator.

[SEAL] By PERRY M. ARMSTRONG,
Authorized Agent.

Subscribed and sworn to before me this fourth day of February A. D. 1938.

[SEAL] WILLIS D. WINE,
*Notary Public.*

My commission Expires May 15, 1940.

11 No. 92087

DISTRICT OF COLUMBIA, *ss:*

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, the same being a Court of Record, having by law a seal, do hereby certify that Willis D. Wine before whom the annexed instrument in writing was executed, and whose name is subscribed thereto, was at the time of signing the same a Notary Public in and for said District, residing therein, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgment and proof of deeds or conveyances of lands, tenements, or hereditaments, and other instruments in writing, to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said instrument and impression of seal thereon are genuine.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Washington, D. C., the 7th day of February A. D. 1938.

g p o 16-6320 CHARLES E. STEWART, *Clerk.*

[SEAL] By ANDREW A. HORNER, *Assistant Clerk.*

*Exhibit to proof of claim*

Form No. 188.

UNITED STATES (emblem) OF AMERICA,
FEDERAL HOUSING ADMINISTRATION,
*Washington, January 28, 1938.*

Pursuant to the provisions of section 661, chapter 17,
12 title 28 of the United States Code (section 882 of the Re-

vised Statutes of the United States), I hereby certify that the annexed Note—Property Owner's Credit Statement, Re: J. F. Andrew, are true copies of the original documents.
are true copies of the originals on file in this Department.

Federal Housing Administration 1934 Official Seal.

In witness whereof, I have hereunto set my hand, and cause the Seal of the Federal Housing Administration to be affixed, on the day and year first above written.

By direction of the Federal Housing Administrator.

PERRY M. ARMSTRONG,
*Certification Authority.*

U. S. Government Printing Office 16-5431. $839.86. 1. 10904

Date March 19, 1935. 193.

For value received, I (we) promise to pay to the order of W. B. Craig Eight Hundred Thirty-nine & 86/100—1/00 Dollars
(Name of Contractor)
in Thirty-six equal consecutive monthly instalments, beginning one month after date hereof, at 22 East 40th Street, New York, N. Y.

Upon non-payment of any instalment when due, all remaining instalments shall immediately become due and payable. And, if allowed by law, upon non-payment of this note at maturity, 15% of the amount due shall be added for attorney's fees if placed in the hands of an attorney for collection.

Signatures of J. F. ANDREW (Husband)
_____ (Wife)
MCP 18571

Documentary Stamps.

2630 Ave. S. N. W. Winter Haven, Florida (P. O. Box) or (R. D. No.) or (no.) (Street) (City) (State).

13 (Back of Promissory Note)

All right, title, and interest of the undersigned is hereby assigned (without warranty, except that the note qualifies for insurance) to the Federal Housing Administrator, acting on behalf of the United States of America.

JOHNS-MANVILLE CREDIT CORPORATION,
By J. L. PICHETTO, *Asst. Treas.*

In consideration of the purchase of the within note, I (we) hereby agree that in the event the holder hereof receives any complaint as to the quality of my (our) workmanship in executing the contract which gives rise to this note, I (we) will immediately adjust such complaint to the satisfaction of the maker

or makers hereof or, failing to do so, will repurchase the note, paying therefor the amount of any unpaid balance thereon. Without recourse otherwise.

W. B. CRAIG, *Contractor.*

By _____

Without recourse.

VILLA LUMBER & SUPPLY CO.,

By A. M. HESS, *Pres.*

14 FHE Form 2B. MCP 18571. (Short form.) Date, Feb. 16, 1935. Account No. ———.

*Property Owner's Credit Statement*

To Mr. W. B. CRAIG,

(Address) *Winter Haven, Fla.*

The following information is given for the purpose of obtaining credit under the provisions of the National Housing Act. The approximate amount of credit required by me (us) for 36 months is $839.86. Married? Widower. Age 84. Yearly income (yearly commissions, yearly rents and salary, wages, etc., $_____); other income, $1,400.00. Total yearly income, $1,400. Employed by, how long _____

(Yes or No or Widowed) (Name of concern) (No.) (Street)

_____ Your position _____.

(City) (State)

Bank at which checking, savings, or thrift account is kept. If none, state "None." Paterson Savings Institution, Paterson, N. J.

(Name) (Address)

Bank, finance, loan, or installment companies, or others, to whom you are making installment payments. If none, state "None."

| Name | Address | Account No. | Original amount | Unpaid balance Monthly payment |
|---|---|---|---|---|
| None | | | | |

Description of property—Single family, x; Multiple family, 0; Apartment house, 0; Farm building, 0; Office building, 0; Warehouse, 0; Factory, 0; Store, 0.

Name in which title appears, J. F. Andrew. Purchase price, $3,250. Year purchase, 1930. Newly built.

Location of Property, 2639 Ave. S. NW., Winter Haven, Fla.

(No.) (Street) (City (State)

15 Amount of fire insurance, $2,000.00. Total of all mortgages, $ None. Details of alterations, repairs, or improvements to be made_____

| | First mortgage | Second mortgage | Third mortgage |
|---|---|---|---|
| Name of mortgage holder | None | None | None. |
| Address of mortgage holder | " | " | " |
| Balance due on mortgage | $ " | $ " | $ " |

State whether or not installments and interest on the above mortgages and any other liens or encumbrances are past due. (If none, State "None." If any, give particulars.)_____

State whether or not all taxes, assessments, and fire and other insurance premiums are paid up to date Yes.
(Yes or No)

Have you applied for a loan under the terms of the National Housing Act? No.
(Yes or No)

Loan, $_____ granted } _____
Loan, $_____ refused } (Name of financial institution, manufacturer,

contractor, or building supply dealer applied to)

Have you any judgments, garnishments, suits, or legal proceedings against you? No. If so, give particulars_____
(Yes or No)

Business references, Robert Hance & Sons, Red Bank, N. J. Villa Lumber & Supply Co., Winter Haven, Fla.

16. I (we) authorize you, or any financial institution to which you may desire to offer my (our) note for sale, to obtain such information as you (they) may require concerning the above statement and agree that it shall remain your (their) property whether or not my (our) note is finally accepted by you. I certify that if the loan is granted to me (us) or my (our) note purchased, the entire proceeds will be used exclusively in payment for alterations, repairs, or improvements upon the property described above and that no part of such proceeds will be used for the purchase of movable or detachable equipment excluded under the regulations of the Federal Housing Ad-

ministration. I hereby affirm that each of the answers given to the foregoing questions is true and correct.

(Signature) J. F. ANDREW.

(Signature of wife of Husband)_____

(Residing at 2630 Ave. S. N. W., Winter Haven, Fla.)

(No.) (Street) (City) (State)

U. S. Government Printing Office: 1934. 16-2877b.

(Back of Property Owner's Credit Statement)

CONTRACTOR'S STATEMENT OF TRANSACTION

| | |
|---|---|
| Amount to be financed | $730.50 |
| Discount charges (Note for 36 months) | 109.36 |
| Amount of note | $839.86 |

If a down payment has been made, in arriving at the amount to be financed, contractor will fill in the following:

Down payment $ None requested.

17 In County Judge's Court of Polk County

In Probate

In re: Estate of J. F. Andrew, deceased

*Order denying petition of United States*

Filed Aug. 19, 1938

This cause came on to be heard upon the petition of the United States for an order allowing and approving a claim in favor of the United States and against the estate of J. F. Andrew, deceased. Petitioner's claim in the amount of Five Hundred Twenty-five and 19/100 ($525.19) Dollars with interest was made part of its petition and presented to this Court for filing on the 1st day of July, A. D. 1938.

The Court finds from an inspection and examination of the record and files in this cause that ancillary letters of administration with will annexed were granted Arlene Summerlin on the Estate of J. F. Andrew, deceased, by this Court on August 11, 1937, and that on the same date the said Arlene Summerlin qualified as such administratrix; that the first publication of notice

to the creditors of said estate was on August 13, 1937; that
18 the claim of the United States was presented to this Court for filing on the 1st day of July, A. D. 1938.

The Court is of the opinion that the United States with respect to filing its claim is in the same position as any other creditor of the estate and enjoys no greater right or privilege and that therefore the claim of the United States is void for the reason that it was not filed in the Office of the County Judge of Polk County, Florida, within Eight (8) Months from the time of the first publication of the notice to creditors as required by Section 5541 (92) Permanent Supplement, Compiled General Laws of Florida 1927. It is, therefore, upon consideration,

Ordered, adjudged, and decreed that the petition of the United States filed in this cause on the 1st day of July, A. D. 1938, be and the same is hereby denied, and it is further,

Ordered, adjudged, and decreed that the claim of the United States in the amount of Five Hundred Twenty-five and 19/100 ($525.19) Dollars with interest presented to this Court for filing on the 1st day of July, A. D. 1938, be and the same is hereby disallowed as a claim against the Estate of J. F. Andrew, deceased.

Done and ordered at Bartow, Florida, this 19th day of August, A. D. 1938.

[SEAL] C. M. WIGGINS,
*County Judge.*

19 In County Judge's Court of Polk County

In Probate

In the Matter of the Estate of J. F. Andrew, Deceased

*Notice of appeal and assignments of error*

Filed Sept. 15, 1938

Comes now the United States of America and enters this its appeal to the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida, from that certain order entered in the above styled matter on the 19th day of August, A. D. 1938, by the Honorable Chester M. Wiggins, County Judge of Polk County, Florida, disallowing the claim of the United States against the estate of J. F. Andrew, deceased.

Appellant assigns the following errors upon which it intends to rely for a reversal of the said order here appealed from:

1. The Honorable Chester M. Wiggins, County Judge of Polk County, Florida, erred in entering the said order dated August 19, 1938, disallowing the claim of the United States of America.

2. The said Chester M. Wiggins erred in finding in and by the said order dated August 19, 1938, that the claim of the United States against the estate of J. F. Andrew, deceased, was void.

20 3. The said Chester M. Wiggins, County Judge of Polk County, Florida, erred in denying the petition of the United States filed in this cause on July 1, 1938, in and by the said order dated August 19, 1938.

JOSEPH E. GILLEN,
*Assistant United States Attorney,*
*Attorney for Appellant.*

Due and legal service of the above and foregoing notice of appeal and receipt of a copy thereof is hereby acknowledged, this 10th day of September A. D. 1938.

A. SUMMERLIN,

A. Summerlin, Attorney for Arlene Summerlin, Ancillary Administratrix of the Estate of J. F. Andrew, dec'd.

21 In County Judge's Court of Polk County

In Probate

In the Matter of: The Estate of J. F. Andrew, Deceased

*Request for delivery of probate file*

Filed Oct. 22, 1938

To the Honorable CHESTER M. WIGGINS,
*County Judge of Polk County, Florida.*

An appeal having been taken to the Circuit Court in and for Polk County, Florida, from that certain order entered in the above styled matter by the County Judge of Polk County, Florida, on August 19, 1938, it is respectfully requested that you as County Judge in and for Polk County, Florida, do forthwith deliver to the Clerk of the Circuit Court of Polk County, Florida, at Bartow, the entire probate file in this matter.

Respectfully,

JOSEPH E. GILLEN,
*Assistant United States Attorney,*
*Tampa, Florida, Attorney for Appellant.*

Due and legal service of the above and foregoing directions and receipt of a true copy thereof is hereby acknowledged, this 17th day of October, A. D. 1938.

A. SUMMERLIN.

A. Summerlin, Attorney for Arlene Summerlin, Ancillary Administratrix of the Estate of J. F. Andrew, dec'd.

On the 22nd day of October, A. D. 1938, the Honorable C. M. Wiggins, County Judge in and for Polk County, Florida, certified the entire probate file in the matter of the Estate of Joseph F. Andrew, deceased, including all of the instruments hereinbefore copied into this transcript of record, to the Clerk of the Circuit Court of Polk County, Florida, an appeal having been taken to the Circuit Court of Polk County, Florida, from the order entered in said cause on August 19, 1938, by the County Judge of Polk County, Florida, which certificate was filed in the office of the Clerk of the Circuit Court of Polk County, Florida, on the 24th day of October, A. D. 1938, and was and is in the words and figures following, to wit:

In County Judge's Court of Polk County

In Probate

In the Matter of the Estate of J. F. Andrew, Deceased

*Certificate transmitting probate file*

I, Chester M. Wiggins, County Judge in and for Polk County, Florida, do hereby certify that the attached papers and documents constitute the entire probate file appearing in my office in the above styled matter, which I have been directed to transmit to the Clerk of the Circuit Court in and for Polk County, Florida, for use in a hearing before the Circuit Court of an appeal taken in this matter by the United States of America from that certain order entered by me as County Judge in this matter on the 19th day of August, A. D. 1938.

In witness whereof I have hereunto set my hand and official seal at Bartow, Florida, on this the 22nd day of October A. D. 1938.

[SEAL] C. M. WIGGINS,

*County Judge in and for Polk County, Florida.*

* * * * * * *

In Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida

No. H-24

UNITED STATES OF AMERICA, APPELLANT

*vs.*

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE OF J. F. ANDREW, DECEASED, APPELLEE

*Order of affirmance*

Filed Nov. 9, 1938

This cause came on to be heard upon appeal from that certain order entered on the 19th day of August A. D. 1938, by the Honorable C. M. Wiggins, County Judge in and for Polk County, Florida, denying the petition of the United States for an order allowing the filing of its claim against the estate of J. F. Andrew, deceased.

The record before this Court discloses that ancillary letters of administration were granted one Arlene Summerlin on the estate of J. F. Andrew, by the County Judge of Polk County, Florida, on August 11, 1937, and on that date the said Arlene Summerlin qualified as such administratrix; that the first publication of notice to the creditors of said estate was on August 13, 1937, and that the claim of the United States against the estate of J. F. Andrew, deceased, was presented to the County Judge of Polk County, Florida, for filing on the First day of July A. D. 1938.

The Court having heard argument of counsel for the respective parties, it is, upon consideration

Ordered, adjudged, and decreed that the United States, with respect to filing its claim, is in the same position as any other creditor of the estate and enjoys no greater right of privilege and that, therefore, the claim of the United States is void for the reason that it was not filed in the office of the County Judge of Polk County, Florida, within eight months from the time of the first publication of the notice to creditors as required by Section 5541 (92), Permanent Supplement, Compiled General Laws of Florida, 1927. It is further

Ordered, adjudged, and decreed that the said order entered in this cause by the Honorable C. M. Wiggins, County Judge in and for Polk County, Florida, on the 19th day of

August A. D. 1938 denying the petition of the United States, be, and the same is hereby, in all respects affirmed.

Done and ordered at Bartow, Florida, this 8th day of November A. D. 1938.

W. J. BARKER,
*Circuit Judge.*

* * * * * * *

In Circuit Court of Polk County

[Title omitted.]

*Entry of appeal*

Filed Nov. 30, 1938

Comes now the United States of America, Appellant,
26 by its undersigned attorneys, and enters this its appeal to the Supreme Court of Florida, and hereby gives notice thereof, from that certain order entered by the Honorable W. J. Barker, Circuit Judge of the Circuit Court in and for Polk County, Florida, on the 8th day of November A. D. 1938, and filed in the Office of the Clerk of the Circuit Court of Polk County, Florida, and recorded in Minute Book M at Page 542, which said appeal is hereby made returnable before said Supreme Court of the State of Florida at Tallahassee, Florida, on the 11th day of January A. D. 1939.

Dated this 30th day of November A. D. 1938.

H. S. PHILLIPS,
*United States Attorney,*
JOSEPH E. GILLEN,
*Assistant United States Attorney,*
*Attorneys for Appellant.*

[File endorsement omitted.]

27 In Circuit Court of Polk County

[Title omitted.]

*Assignment of errors*

Filed Nov. 30, 1938

The United States of America, Appellant, by its undersigned Attorneys, having entered an appeal to the Supreme Court of the State of Florida from that certain order entered by the Honorable W. J. Barker, Judge of the Circuit Court in and for Polk

County, Florida, on the 8th day of November A. D. 1938, and filed in the office of the Clerk of the Circuit Court of Polk County, Florida, and recorded in Minute Book M at Page 542, hereby assigns the following errors upon which it intends to rely for a reversal of the said order appealed from:

1. The Circuit Court erred in making and entering under date of November 8, 1938, its order affirming the order and judgment of the County Judge's Court in and for Polk County, Florida;

28 2. The Circuit Court erred in finding in and by its order under date of November 8, 1938, that the claim of the United States against the estate of Joseph F. Andrew, deceased, is void for the reason that it was not filed within the time prescribed by Section 5541 (92), Permanent Supplement, Compiled General Laws of Florida, 1927.

Wherefore, appellant prays a reversal of the said order which has been appealed from.

H. S. PHILLIPS,
*United States Attorney.*
JOSEPH E. GILLEN,
*Assistant United States Attorney.*
*Attorneys for Appellant.*

Due and legal service of a true and correct copy of the above and foregoing Assignment of Errors is hereby acknowledged this 30 day of November A. D. 1938.

A. SUMMERLIN.

A. Summerlin, Attorney for Arlene Summerlin, Ancillary Administratrix of the Estate of J. F. Andrew, dec'd.

29 In Circuit Court of Polk County

[Title omitted.]

*Application for transcript of record*

Filed Nov. 30, 1938

Comes now the United States of America, Appellant, by its undersigned attorneys, and applies to the Honorable D. H. Sloan, Jr., Clerk of the Circuit Court in and for Polk County, Florida, for a certified transcript of the record in this cause to be used in the Supreme Court of the State of Florida upon the appeal sued out herein from the Circuit Court of the State of Florida in and for Polk County, to the said Supreme Court of Florida,

and the said Clerk of said Circuit Court is hereby requested and directed to commence the making up of the said certified transcript of the record herein on the 16th day of December A. D. 1938.

This the 30th day of November A. D. 1938.

H. S. PHILLIPS,
*United States Attorney,*
JOSEPH E. GILLEN,
*Assistant United States Attorney,*
*Attorneys for Appellant.*

30 Due and legal service of a true and correct copy of the above and foregoing application for transcript of record is hereby acknowledged this 30th day of November A. D. 1938.

A. SUMMERLIN,
A. Summerlin, Attorney for Arlene Summerlin, Ancillary Admnx. of Estate of J. F. Andrew, dec'd.

* * * * * * *

In Circuit Court of Polk County

[Title omitted.]

*Stipulation as to transcript of record*

Filed Nov. 30, 1938

It is hereby stipulated and agreed by and between Joseph E. Gillen, Assistant United States Attorney, Attorney for Appellant, United States of America, and A. Summerlin, Attorney for Arlene Summerlin, Ancillary Administratrix of the Estate of Joseph F. Andrew, deceased, Appellee, that the Clerk shall copy into and make a part of the transcript of record in this cause for use in the Supreme Court of Florida upon the appeal here-
31 tofore entered, the following described papers and shall not recite or copy into said transcript of record any other papers or proceedings:

1. Ancillary Letters of Administration granted Arlene Summerlin on the Estate of Joseph F. Andrew, deceased, by the Honorable C. M. Wiggins, County Judge of Polk County, Florida, on the 11th day of August A. D. 1937.

2. Proof of publication of notice to creditors of the Estate of Joseph F. Andrew, deceased.

3. Petition of the United States of America and proof of claim filed in the office of the County Judge of Polk County, Florida, on July 1, 1938.

4. Order entered by the County Judge of Polk County, Florida, on August 19, 1938, denying the petition of the United States of America.

5. Notice of Appeal and Assignment of Errors filed in the Office of the County Judge of Polk County, Florida, on September 15, 1938, upon appeal from the said County Judge's Court of Polk County, Florida, to the Circuit Court in and for Polk County, Florida.

6. Request of Joseph E. Gillen, Assistant United States Attorney, for the County Judge of Polk County, Florida, to deliver the entire probate file in the matter of the Estate of Joseph F. Andrew, deceased, to the Clerk of the Circuit Court of Polk County, Florida, for use in the hearing on appeal, filed in the office of the County Judge of Polk County, Florida, on October 22, 1938.

7. Certificate of the Honorable C. M. Wiggins, County Judge in and for Polk County, Florida, transmitting the above described papers (listed 1, 2, 3, 4, 5, and 6), together with others to the Clerk of the Circuit Court of Polk County, Florida.

32 8. Order entered by the Honorable W. J. Barker, Circuit Judge in and for Polk County, Florida, on November 8, 1938, and recorded in Minute Book M at Page 542 of the Records of Polk County, Florida.

9. Entry of appeal filed in the office of the Clerk of the Circuit Court of Polk County, Florida, on November 30, 1938.

10. The Assignment of Errors filed in the office of the Clerk of the Circuit Court, Polk County, Florida, on November 30, 1938.

11. Application for Transcript filed in the office of the Clerk of the Circuit Court, Polk County, Florida, on November 30, 1938.

12. Stipulation of counsel filed in the office of the Clerk of the Circuit Court, Polk County, Florida, on November 30, 1938.

13. Directions to the Clerk.

Dated this 30th day of November, A. D. 1938.

H. S. PHILLIPS,
*United States Attorney,*
JOSEPH E. GILLEN,
*Assistant United States Attorney,*
*Attorneys for Appellant.*
A. SUMMERLIN.

A. Summerlin, Attorney for Arlene Summerlin, Ancillary Administratrix of the Estate of J. F. Andrew, dec'd, *Attorney for Appellee.*

33 In the Circuit Court of Polk County.

[Title omitted.]

*Directions as to transcript of record Filed Nov. 30, 1938*

To the CLERK OF THE ABOVE-STYLED COURT:

In making up the transcript of record to be used upon the appeal heretofore entered in this cause to the Supreme Court of Florida you are hereby directed to copy into and make a part of said transcript the following papers and proceedings, to-wit:

1. Ancillary Letters of Administration granted Arlene Summerlin on the Estate of Joseph F. Andrew, deceased, by the Honorable C. M. Wiggins, County Judge of Polk County, Florida, on the 11th day of August, A. D. 1937.

2. Proof of publication of notice to creditors of the Estate of Joseph F. Andrew, deceased.

3. Petition of the United States of America and proof of claim filed in the office of the County Judge of Polk County, Florida, on July 1, 1938.

34 4. Order entered by the County Judge of Polk County, Florida, on August 19, 1938, d[illegible] the petition of the United States of America.

5. Notice of Appeal and Assignment of Errors filed in the Office of the County Judge of Polk County, Florida, on September 15, 1938, upon appeal from the said County Judge's Court of Polk County, Florida, to the Circuit Court in and for Polk County, Florida.

6. Request of Joseph E. Gillen, Assistant United States Attorney, for the County Judge of Polk County, Florida, to deliver the entire probate file in the matter of the Estate of Joseph F. Andrew, deceased, to the Clerk of the Circuit Court of Polk County, Florida, for use in the hearing on appeal, filed in the Office of the County Judge of Polk County, Florida, on October 22, 1938.

7. Certificate of the Honorable C. M. Wiggins, County Judge in and for Polk County, Florida, transmitting the above described papers (listed 1, 2, 3, 4, 5, and 6), together with others to the Clerk of the Circuit Court of Polk County, Florida.

All of the above papers were transmitted to you by the County Judge of Polk County, Florida, on October 24, 1938. You are directed to copy into and make a part of the said transcript of record the following papers and proceedings, to-wit:

8. Order entered by the Honorable W. J. Barker, Circuit Judge in and for Polk County, Florida, on November 8, 1938, and recorded in Minute Book M at Page 542 of the records of Polk County, Florida.

9. Entry of appeal filed in the Office of the Clerk of the Circuit Court of Polk County, Florida, on November 30, 1938.

The Assignment of Errors filed in the Office of the Clerk
35 of the Circuit Court, Polk County, Florida, on November 30, 1938.

11. Application for Transcript filed in the Office of the Clerk of the Circuit Court, Polk County, Florida, on November 30, 1938.

12. Stipulation of counsel filed in the office of the Clerk of the Circuit Court, Polk County, Florida, on November 30, 1938.

13. These directions.

And you will omit from said transcript of record all other papers or proceedings in said cause.

Dated this 30th day of November, A. D. 1938.

H. S. PHILLIPS,
*United States Attorney,*
JOSEPH E. GILLEN,
*Assistant United States Attorney,*
*Attorneys for Appellant.*

Due and legal service of a true and correct copy of the above and foregoing Directions to the Clerk of the Circuit Court of Polk County, Florida, is hereby acknowledged this 30 day of November, A. D. 1938.

A. SUMMERLIN,
A. Summerlin, Attorney for Arlene Summerlin, Ancillary Administratrix of Estate of J. F. Andrew, deceased.

36 [Clerk's certificates to foregoing transcript omitted in printing.]

39 In Supreme Court of Florida

June Term, A. D. 1939

Polk County

UNITED STATES OF AMERICA, APPELLANT

*vs.*

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE OF J. F. ANDREW, DECEASED, APPELLEE

An Appeal from the Circuit Court for Polk County, W. J. Barker, Judge

Herbert S. Phillips and Joseph E. Gillen, for Appellant; A. Summerlin, for Appellee.

*Opinion*

Filed November 10, 1939

TERRELL, C. J.

This cause arises from these facts: In March 1935, as provided by the National Housing Act, J. F. Andrew executed his promissory note for $839.86 in favor of W. B. Craig, payable in thirty-six equal monthly installments. The note was transferred to Johns-Manville Credit Corporation. The maker defaulted in his payments and Johns-Manville Credit Corporation made demand on the Federal Housing Administrator for the sum of $529.19, said amount being the balance due on the note. It was paid by draft on the Treasurer of the United States and the latter became the owner of the note. Andrew died and appellee was named ancillary administratrix of his estate in Polk County.

August 13, 1937, the ancillary administratrix gave notice to creditors to file proof of their claims against Andrew's estate within eight months, as required by law. On July 1, 1938, eleven months after the notice, the United States filed proof of its claim in the County Court and petitioned the judge for an order declaring it to be superior to all other claims as a debt due the United States as provided by Sections 191 and 192, Title 31, U. S. Code Annotated. The petition was denied because the claim was not filed within eight months from the time the notice to creditors was given. This order was on appeal approved by the Circuit Court. The decree of the Circuit is here for review.

The question to be answered is whether or not claims held by the United States against the estates of decedents in this State must be filed in eight months from date of notice thereof as required by Sections 5541 (92) Compiled General Laws of 1927, the pertinent part of which is as follows:

"No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee, or devisee of the decedent unless the same shall be in writing and contain the place of residence and post office address of the claimant, and shall be sworn to by the claimant, his agent or attorney, and be filed in the office of the county judge granting letters. Any such claim or demand not so filed within eight months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise: * * *"

This is not a statute of limitations prescribing a period within which a right may be enforced but it is rather in its nature a statute of non claim for the orderly and expeditious settlement of the estates of decedents. It is in the same category as statutes providing for conveyancing and marketing negotiable instruments, and conducting other business relations. The United States and its agencies are on notice of such statutes and are bound by them to the same extent and in the same manner as other persons are bound by them. If this is not the case, there is now no such thing as orderly and expeditious administration of estates and other businesses because of the extent to which the Federal Government has became a competitor in them. Brooks vs. Federal Land Bank of Columbia, 106 Fla. 412, 143 So. 749; United States vs. Barker, 12 Wheat. 559, 25 U. S. 559, 6 L. Ed. 728; Cook et al. vs. United States, 91 U. S. 389, 23 L. Ed. 237.

In this holding, we have not overlooked the cases cited by appellant. They have been read but they do not apply to statutes such as we are confronted with in this case. They treat rather the application of statutes of limitations which in many instances do not apply to State or Federal governments. Neither are such governments bound by laches or estoppel but such rules are not involved in this case. When governmental entities depart from their sovereign function and compete with private citizens in business, they should be bound by the same rules.

The judgment is affirmed.

Affirmed.

BUFORD and THOMAS, J. J. Concur.

CHAPMAN, J., concurs in opinion & judgment.

Justices WHITFIELD and BROWN not participating as authorized by Section 4687 Compiled General Laws of 1927 and Rule 21-A of the Rules of this Court.

42 In Supreme Court of Florida

Polk County

UNITED STATES OF AMERICA, APPELLANT

*vs.*

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE OF J. F. ANDREW, DECEASED, APPELLEE

*Judgment*

November 10, 1939

This cause having heretofore been submitted to the Court upon the transcript of the record of the order herein, and briefs and

argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said judgment; it is, therefore, considered, ordered and decreed by the Court that the said judgment of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellant her costs by her in this behalf expended, which costs are taxed in the sum of $——, all of which is ordered to be certified to the Court below.

Opinion of the Court in this cause prepared by Mr. Chief Justice Terrell was this day ordered to be filed.

45 Mandate from Supreme Court

The State of Florida

*To the Honorable the Judge of the Circuit Court for the Tenth Judicial Circuit of Florida, Greeting:*

Whereas, Lately in the Circuit Court of the Tenth Judicial Circuit of Florida, in and for the County of Polk, in a cause wherein United States of America, was Appellant and Arlene Summerlin, as Ancillary Administratrix of the estate of J. F. Andrew, deceased, was Appellee, the Order of said Circuit Court was rendered Nov. 9, 1938, as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And whereas, at the June Term of said Supreme Court, holden at Tallahassee, A. D. 1939, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 10th day of November A. D. 1939, it was considered by said Supreme Court that the said Order of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee to have and recover of and from the Appellant her costs by her in this behalf expended, which costs are taxed at the sum of ---------- Dollars; therefore,

You are hereby commanded, that such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Order of the Circuit Court notwithstanding.

Witness, The Honorable Glenn Terrell, Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 29th day of November, A. D. 1939.

[SEAL] GUYTE P. McCORD,
*Clerk, Supreme Court of Florida.*

A true copy.
Test.

GUYTE P. McCORD,
*Clerk, Supreme Court.*

47 In Supreme Court of Florida

[Title omitted.]

*Application for stay order*

Filed Dec. 8, 1939

Comes now the appellant, United States of America, by Herbert S. Phillips, United States Attorney for the Southern District of Florida, and Joseph E. Gillen, Assistant United States Attorney for said district, and applies to the Court for the entry of an order staying any and all further proceedings in the above styled cause, and in this behalf respectfully represents unto the Court the following:

1. That this Honorable Court on November 10, 1939, rendered its opinion in the above styled cause affirming the order and judgment of the Circuit Court in and for Polk County, Florida, and holding that appellant, United States of America, with respect to filing claims in its favor against the estates of deceased persons, is bound by the provisions of Section 5541 (92), Compiled General Laws of Florida, 1927, requiring such claims to be filed in the office of the County Judge within eight (8) months from the date of the first publication of notice to creditors.

48 2. That the Solicitor General of the United States is now considering the advisability of filing a petition in the Supreme Court of the United States for a writ of certiorari for the purpose of having that court review the judgment of the Supreme Court of Florida in this cause, and that it will require a period of at least thirty (30) days for a decision to be reached and petition for writ of certiorari filed in the event the Solicitor General determines to take such action.

Wherefore, appellant respectfully moves the Court to enter an order staying the issuance of the mandate in this cause and stay-

ing any and all further proceedings herein for a period of thirty (30) days from this date, in accordance with the provisions of Section 350, Title 28, U. S. C. A.

H. S. PHILLIPS,
*United States Attorney.*
JOSEPH E. GILLEN,
*Assistant United States Attorney.*

50 In Supreme Court of Florida

[Title omitted.]

*Order granting application for stay order*

December 8, 1939

The United States of America, Appellant, having filed application for an order staying the issuance of the Mandate in the above entitled cause and for staying any and all further proceedings herein for a period of 30 days from this date in accordance with the provisions of Section 350, Title 28, United States Code, and it appearing that the Mandate in said cause has been transmitted to the Lower Court and the said motion having been duly considered, it is ordered that the said motion be also treated as a motion for the return of the Mandate to this Court as well as for a stay order, it is further ordered that the Lower Court be and is hereby directed to return the Mandate in said cause to this Court and said cause be and the same is hereby stayed and all further proceedings herein for a period of 30 days from this date in accordance with the provisions of Section 350, Title 28, United States Code.

A true copy.
Test.

GUYTE P. MCCORD,
*Clerk, Supreme Court.*

52 In Supreme Court of Florida

[Title omitted.]

*Praecipe for transcript of record*

Filed Feb. 3, 1939

Comes now the United States of America by its undersigned attorneys and requests the Clerk of the above-styled court to

prepare and transmit to the Honorable Francis Biddle, Solicitor General of the United States, Washington, D. C., for use in the Supreme Court of the United States, one certified and eleven uncertified copies of the transcript of record filed in the Supreme Court of Florida in the above-styled cause, and also one certified copy of all papers filed and proceedings had in said cause in the Supreme Court of Florida, including the following instruments, to wit:

1. Opinion of the Supreme Court of Florida in said cause, filed November 10, 1939;

2. Mandate issued by the Supreme Court of Florida in said cause;

3. Application for stay order, filed December 8, 1939;

4. Order entered on December 8, 1939, recalling the
53 Mandate which had been issued and staying all further proceedings in said cause;

5. This Praecipe.

HERBERT S. PHILLIPS,
*United States Attorney.*
JOSEPH E. GILLEN,
*Asst. United States Attorney.*

54 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE 1940

Supreme Court of the United States

*Order allowing certiorari*

Filed March 25, 1940

The petition herein for a writ of certiorari to the Supreme Court of the State of Florida is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

No. 715

# In the Supreme Court of the United States

OCTOBER TERM, 1939

UNITED STATES OF AMERICA, PETITIONER

*v.*

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE OF J. F. ANDREW, DECEASED

**PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA**

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## CITATIONS


Cases:

*Board of County Commissioners, Jackson County, Kansas* v. *United States*, No. 14, October Term, 1939 — 7

*Cooke* v. *United States*, 91 U. S. 389 — 7, 8

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*Fink* v. *O'Neill*, 106 U. S. 272 — 7

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*Guaranty Trust Co.* v. *United States*, 304 U. S. 126 — 7

*Harrison* v. *Deutch*, 294 Ill. App. 8 — 8

*Pond* v. *Dougherty*, 6 Cal. App. 686 — 8

*United States* v. *Barker*, 12 Wheat. 559 — 7

*United States* v. *Backus*, Fed. Cas. No. 14491 — 8

*United States* v. *Hailey*, 2 Idaho 22 — 8

*United States* v. *Hoar*, Fed. Cas. No. 15373 — 8

*United States* v. *Kirkpatrick*, 9 Wheat. 720 — 6

*United States* v. *Knight*, 14 Pet. 301 — 6–7

*United States* v. *Knott*, 298 U. S. 544 — 2

*United States* v. *Nashville &c. R'y Co.*, 118 U. S. 120 — 7

*United States* v. *Thompson*, 98 U. S. 486 — 7

Statute:

Section 5541(92) of the Permanent Supplement, Compiled General Laws of Florida (1927) — 3–4

Miscellaneous:

36 Mich. L. Rev. 973, note — 9


209592—40

# In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 715

UNITED STATES OF AMERICA, PETITIONER

*v.*

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE OF J. F. ANDREW, DECEASED

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered in the above case on November 10, 1939, affirming the order of the Circuit Court for Polk County, Florida, which in turn affirmed the order of the County Judge's Court for Polk County, Florida, disallowing a claim filed by the United States against the estate of J. F. Andrew, deceased.

### OPINIONS BELOW

The orders of the County Judge's Court (R. 11) and the Circuit Court for Polk County, Florida (R. 15) were entered without opinions. The opinion of the Supreme Court of Florida (R. 21) is reported in 191 So. 842.

## JURISDICTIONAL STATEMENT

The judgment of the Supreme Court of Florida was entered on November 10, 1939 (R. 23). The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, on the ground that the decision below denied a title, right, privilege or immunity claimed by the petitioner under the Constitution, statutes, and authority of the United States. Cases relied on to sustain the jurisdiction of this Court are *Davis* v. *Corona Coal Co.*, 265 U. S. 219; *United States* v. *Knott*, 298 U. S. 544.

The court below held that a claim of the United States against a decedent's estate was unenforceable and void because it was not filed in the office of the County Judge within eight months of the first publication of the notice to creditors, as required by Section 5541 (92), Compiled General Laws of Florida (1927). The United States contends that this statute cannot validly be applied against the United States.

Petitioner raised the federal question before the County Judge's Court for Polk County (R. 3); by assignment of errors on appeal from the order of the County Judge's Court to the Circuit Court (R. 12); and by assignment of errors on appeal from the order of the Circuit Court for Polk County to the Supreme Court of Florida (R. 16). Each of these courts passed upon the federal question adversely to the contention of the petitioner (R. 11, 15, 21).

The grounds, upon which it is contended that the question involved is substantial, are set forth under the Reasons for Granting the Writ, *infra*, pp. 6–9.

## QUESTION PRESENTED

Whether a state statute, providing that a claim against the estate of a deceased person shall be void if not filed in the office of the County Judge within eight months from the time of the first publication of the notice to creditors, may be applied to a claim of the United States against the estate.

## STATUTE INVOLVED

Section 5541 (92) of the Permanent Supplement, Compiled General Laws of Florida (1927), which deals with the time within which claims may be filed against the estate of a decedent, provides:

> No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and post-office address of the claimant and shall be sworn to by the claimant, his agent or attorney and be filed in the office of the county judge granting letters. Any such claim or demand not so

filed within eight months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise: Provided, however, that the lien of any duly recorded mortgage and the lien of any person in possession of personal property and the right to foreclose and enforce such mortgage or lien shall not be impaired or affected by failure to file claim or demand as hereinabove provided, but such failure shall bar the right to enforce any personal liability against the estate, and the claimant shall be limited to the enforcement of the mortgage or lien against the specific property so mortgaged or held. Nothing herein contained shall be construed to require any legatee, devisee or heir at law to file any claim for the share or interest in the estate to which he may be entitled.

STATEMENT

On March 19, 1935, one J. F. Andrew executed to one W. B. Craig, a promissory note for $839.86, payable in thirty-six equal monthly installments (R. 8). The note was in due course assigned and transferred to Johns-Manville Credit Corporation (R. 5). The note, given to finance the improvement of certain property of Andrew (R. 4, 9), was insured by the United States under the National Housing Act, c. 847, 48 Stat. 1246 (R. 4–5). In April 1936, Andrew defaulted in the payment of

the note (R. 6) and on July 30, 1936, the Johns-Manville Credit Corporation made claim upon the Federal Housing Administrator for $525.19, the balance due on the note (R. 6). The claim was paid on August 21, 1936, by the Administrator through a draft drawn on the Treasurer of the United States (R. 6). The Johns-Manville Corporation thereupon assigned the note to the Federal Housing Administrator acting on behalf of the United States.

The maker of the note, Andrew, died and on August 11, 1937, the respondent Arlene Summerlin was appointed Ancillary Administratrix of his estate by the County Judge of Polk County, Florida, and she qualified as such administratrix on the same date (R. 1). Thereafter, on August 13, 1937, the respondent gave notice by publication to the creditors of the estate of J. F. Andrew, deceased, to file proof of their claims against the estate within eight months as required by law (R. 1, 2).

On July 1, 1938, the United States filed in the office of the County Judge of Polk County, Florida, proof of its claim against the estate of J. F. Andrew, deceased, in the amount of $525.19 with interest, together with a petition for an order allowing the claim and declaring it to be entitled to priority under R. S., Secs. 3466 and 3467 (R. 3). The County Judge, on August 19, 1938, denied the petition and disallowed the claim of the United States because it was not filed within eight months

after notice by publication was given to the creditors (R. 11).

The United States appealed from this order to the Circuit Court for Polk County, Florida, which affirmed (R. 15). On further appeal the Supreme Court of Florida affirmed the order of the Circuit Court (R. 23).

## SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Florida erred:

1. In holding that the state statute limiting the time within which claims must be filed against a decedent's estate validly applied to the United States.

2. In holding that the claim of the United States was void for failure to comply with state statute.

3. In affirming the judgment of the Circuit Court.

## REASONS FOR GRANTING THE WRIT

1. The court below held that a claim of the United States against the estate of a decedent was void because it was not filed within the eight months' period prescribed by a Florida statute for the filing of claims against a decedent's estate. This holding is inconsistent with the applicable decisions of this Court.

It is well settled that state statutes of limitation fixing the time within which suit must be brought are not applicable to the United States in the absence of express assent by Congress. *United States* v. *Kirkpatrick*, 9 Wheat. 720, 735; *United*

*States* v. *Knight*, 14 Pet. 301, 315; *United States* v. *Thompson*, 98 U. S. 486, 489; *Fink* v. *O'Neill*, 106 U. S. 272, 281; *United States* v. *Nashville, &c. R'y Co.*, 118 U. S. 120, 125; *Dupont de Nemours & Co.* v. *Davis*, 264 U. S. 456, 462; *Board of County Commissioners, Jackson County, Kansas* v. *United States*, No. 14, this Term, decided December 18, 1939. And since the inapplicability of state statutes of limitations is founded in the Constitution, submission to such statutes cannot be required as a condition of access to the state courts. *Davis* v. *Corona Coal Co.*, 265 U. S. 219, 222–223; cf. *Gibson* v. *Chouteau*, 13 Wall. 92.

The court below recognized that a general state statute of limitations could not be applied to the United States (R. 22–23), but concluded that "a statute of non claim for the orderly and expeditious settlement of the estates of decedents" was governed by a different principle. But the constitutional immunity of the United States is not defeated by a state policy to make "expeditious settlement of estates" any more than by the state policy, embodied in general statutes of limitation, to "protect the citizens from stale and vexatious claims." *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 136.

The court below also relied on *Cooke* v. *United States*, 91 U. S. 389, and *United States* v. *Barker*, 12 Wheat. 559, which formulate the rule that "when the United States become parties to com-

mercial paper, they incur all the responsibilities of private persons under the same circumstances." (91 U. S. at 396.) This principle obviously has no application here. So far as expeditious liquidation of estates is concerned, which is the end to which the nonclaims statute is directed, it is immaterial whether the claims are based on commercial paper or derive from some other source, and the statute makes no distinction between types of claims.

2. There is a conflict of decisions on the point here involved in the state courts and lower federal courts. Mr. Justice Story, on circuit, held, in *United States* v. *Hoar*, Fed. Cas. No. 15373, that a nonclaims statute did not preclude a suit against an administrator even after his discharge, and that a statute of limitation could not be applied to a claim of the United States against a decedent's estate. This view was adopted in *United States* v. *Backus*, Fed. Cas. No. 14491, *Pond* v. *Dougherty*, 6 Cal. App. 686, and *Harrison* v. *Deutch*, 294 Ill. App. 8. In *United States* v. *Hailey*, 2 Idaho 22, on the other hand, the Supreme Court of Idaho adopted the view taken by the court below.

3. The question is one of considerable public importance. The Government, it need hardly be observed, has frequent occasion to file claims against estates of decedents in the probate courts of all the states, forty-six of which have statutes regulating the time and manner in which such claims against estates of decedents may be filed.

Note, 36 Mich. L. Rev. 973. The statutory period varies from state to state, but is normally relatively short as instanced by the eight-month period provided in the Florida statute here involved. The delays inherent in transmittal of information from the various agencies and departments of the Government to the Department of Justice, and from it to the United States attorneys, render it extremely difficult for the United States to file claims within periods which may fairly be prescribed for private individuals. Whether it must undertake that burden should be determined by this Court.

## CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

FRANCIS BIDDLE,
*Solicitor General.*

FEBRUARY 1940.

U. S. GOVERNMENT PRINTING OFFICE: 1940

No. 715

# In the Supreme Court of the United States

OCTOBER TERM, 1939

THE UNITED STATES OF AMERICA, PETITIONER

*v.*

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE OF J. F. ANDREW, DECEASED

*ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA*

## BRIEF FOR THE UNITED STATES

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## BRIEF FOR THE UNITED STATES

### OPINIONS BELOW

The orders of the County Judge's Court (R. 11) and of the Circuit Court for Polk County, Florida (R. 15) were entered without opinions. The opinion of the Supreme Court of Florida (R. 22–23) is reported in 191 So. 842.

### JURISDICTION

The judgment of the Supreme Court of Florida was entered on November 10, 1939 (R. 23). The petition for a writ of certiorari was filed February 10, 1940, and was granted March 25, 1940. The

jurisdiction of this Court rests upon Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTION PRESENTED

Whether a state statute, providing that no claim against the estate of a deceased person shall be valid unless filed in the office of the County Judge within eight months from the time of the first publication of the notice to creditors, may be applied to a claim of the United States against the estate.

## STATUTE INVOLVED

Section 5541 (92) of the Permanent Supplement, Compiled General Laws of Florida (1927), which deals with the time within which claims may be filed against the estate of a decedent, provides:

> No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and post office address of the claimant and shall be sworn to by the claimant, his agent or attorney and be filed in the office of the county judge granting letters. Any such claim or demand not so filed within eight months from the time of the first publication of the notice to creditors shall be void even

though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise: Provided, however, that the lien of any duly recorded mortgage and the lien of any person in possession of personal property and the right to foreclose and enforce such mortgage or lien shall not be impaired or affected by failure to file claim or demand as hereinabove provided, but such failure shall bar the right to enforce any personal liability against the estate, and the claimant shall be limited to the enforcement of the mortgage or lien against the specific property so mortgaged or held. Nothing herein contained shall be construed to require any legatee, devisee or heir at law to file any claim for the share or interest in the estate to which he may be entitled.

## STATEMENT

One J. F. Andrew, the respondent's decedent, executed to one W. B. Craig, a promissory note for $839.86, payable in thirty-six equal monthly installments (R. 8). The note was in due course assigned and transferred to Johns-Manville Credit Corporation (R. 5). The note, given to finance the improvement of certain property of Andrew (R. 4, 10), was insured by the United States under the National Housing Act, c. 847, 48 Stat. 1246 (R. 4–5). Andrew defaulted in the payment of the note (R. 6), and the Johns-Manville Credit Corporation made claim upon the Federal Housing

Administrator for $525.19, the balance due on the note (R. 6). The claim was paid by the Administrator through a draft drawn on the Treasurer of the United States (R. 6). The Johns-Manville Credit Corporation thereupon assigned the note to the Federal Housing Administrator acting on behalf of the United States (R. 6).

The maker of the note, Andrew, died, and the respondent Arlene Summerlin was appointed ancillary administratrix of his estate by the County Judge of Polk County, Florida (R. 1). Thereafter, on August 13, 1937, the respondent gave notice by publication to the creditors of the estate of J. F. Andrew, deceased, to file proof of their claims against the estate within eight months as required by law (R. 1, 2).

On July 1, 1938, the United States filed in the office of the County Judge of Polk County, Florida, proof of its claim against the estate of J. F. Andrew, deceased, in the amount of $525.19 with interest, together with a petition for an order allowing the claim and declaring it to be entitled to priority under Revised Statutes, sections 3466 and 3467 (R. 3).[1] The County Judge, on August 19, 1938, denied the petition and disallowed the claim of the United States because it was not filed within

[1] The proof of claim filed by the United States refers to "Proof of Claim executed against the estate of J. F. Andrew by the Johns-Manville Credit Corp. on June 29, 1936" (R. 6). The proof of claim thus referred to was, although the record does not so reveal, filed in New Jersey, where the decedent was domiciled.

eight months after notice by publication was given to the creditors (R. 11).

The United States appealed from this order to the Circuit Court for Polk County, Florida, which affirmed (R. 15). On further appeal the Supreme Court of Florida affirmed the order of the Circuit Court (R. 23).

## SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Florida erred:

1. In holding that the state statute limiting the time within which claims must be filed against a decedent's estate validly applied to the United States.

2. In holding that the claim of the United States was void for failure to comply with the state statute.

3. In affirming the judgment of the Circuit Court.

## SUMMARY OF ARGUMENT

The immunity of the United States from state statutes of limitations or common law doctrines of laches is well settled. It extends to proceedings for the enforcement of all claims of the United States, whether the right asserted is conferred by federal enactment or acquired pursuant thereto but founded on state law, and the obligation to give it effect rests upon the state courts no less than upon the courts of the United States.

The Florida non-claim statute, it is true, like those of other states, is not a general statute of

limitations but a special provision designed to expedite distribution of estates to the heirs and intended beneficiaries and to protect the distributees in the undistributed enjoyment of their possession. Cf. *Brooks* v. *Federal Land Bank*, 106 Fla. 412, 422–423; *Pufahl* v. *Estate of Parks*, 299 U. S. 217, 228. But the distinction between statutes limiting the period for proof of claims against the executors or administrators and general statutes of limitations affords no basis for a contention that the Government's immunity is limited to the latter alone. The Government's immunity extends to actions involving title to real estate, even though the general statute of limitations as applied to private individuals operates to extinguish the right as well as the remedy.

It is immaterial that the claim in this case is founded on a note. The United States, as maker and holder of negotiable instruments, is bound by all rules of the law merchant designed to promote the marketability of commercial paper, but this is so for the reason that the public interest of the United States as well as of individuals is served by the enforcement of such rules, and the United States is presumed, therefore, to have intended to waive any immunity from a defense of laches. It is well-settled, however, that the Government's immunity extends to suits against the maker to enforce claims founded on negotiable instruments. It is likewise immaterial that the claim of the

United States was acquired in the performance of federal functions which are similar in some respects to a private insurance or banking "business." Contention to the contrary is foreclosed by the decisions of this Court.

No contention is or could be made that the provision of the National Housing Act authorizing the Federal Housing Administrator to "sue and be sued" constitutes a waiver of the Government's immunity as a plaintiff from state statutes of limitations. In any event, the present claim is concededly founded on a debt owing the United States, and any waiver of immunity as to claims of the Federal Housing Administrator does not extend to claims of the United States.

## ARGUMENT

### THE CLAIM OF THE UNITED STATES IS NOT BARRED BY THE FAILURE TO FILE IT WITHIN THE PERIOD PRESCRIBED BY THE FLORIDA STATUTE.

1. It is well settled that the United States enjoys a sovereign immunity from the defense of state statutes of limitations or common law doctrines of laches. *United States* v. *Thompson*, 98 U. S. 486; *United States* v. *Nashville, Chattanooga & St. L. Ry. Co.*, 118 U. S. 120, 125; *United States* v. *Insley*, 130 U. S. 263; *Stanley* v. *Schwalby*, 147 U. S. 508, 514–517; *Chesapeake & Delaware Canal Co.* v. *United States*, 250 U. S. 123; *Davis* v. *Corona Coal Co.*, 265 U. S. 219; *Phillips* v. *Commis-*

*sioner*, 283 U. S. 589, 602; *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 132; *Board of County Commissioners, Jackson County, Kansas* v. *United States*, 308 U. S. 343; *United States* v. *Hoar*, 2 Mason 311, Fed. Cas. No. 15,373; *United States* v. *Backus*, 6 McLean 443, Fed. Cas. No. 14,491; cf. *United States* v. *Whited and Wheless*, 246 U. S. 552; *Dupont de Nemours & Co.* v. *Davis*, 264 U. S. 456. Whatever the historic origin of the doctrine, "the rule is supportable now because its benefit and advantage extend to every citizen . . . whose plea of laches or limitations it precludes; and its uniform survival in the United States has been generally accounted for and justified on grounds of policy rather than upon any inherited notions of the personal privilege of the king." *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 132. And since the immunity is a matter of federal law, submission to local statutes of limitations cannot be required as a condition of access to state courts. *Davis* v. *Corona Coal Co.*, 265 U. S. 219. Cf. *United States* v. *Bank of New York & Trust Co.*, 296 U. S. 463, 479; *United States* v. *Shaw*, No. 570, this Term, decided March 25, 1940.

2. While this Court has never decided a case involving a state statute limiting the period for the exhibition and proof of claims against executors and administrators, the lower federal courts and, so far as we have been able to ascertain, all the state courts which have passed upon the question other than those of Florida, have held that

the Government's immunity extends to such statutes. Mr. Justice Story, while on circuit, so held in the often cited case of *United States* v. *Hoar*, 2 Mason 311, Fed. Cas. No. 15,373 (C. C. D. Mass.). Accord: *United States v. Backus*, 6 McLean 443, Fed. Cas. No. 14,491 (C. C. D. Mich.); *United States* v. *Houston*, 48 Fed. 207 (D. Kan.); *United States v. Adams*, 54 Fed. 114 (C. C. D. Nev.); *Pond* v. *United States*, 111 Fed. 989 (C. C. A. 9th); *Pond* v. *Dougherty*, 6 Cal. App. 686; *Harrison* v. *Deutsch*, 294 Ill. App. 8; cf. *Davis* v. *Bargloff*, 200 Ia. 1160; *United States* v. *Holt*, 131 S. W. (2d) 59 (Mo. 1939).[2] The principles announced in the decisions of this Court fully support the conclusion thus reached by the state and lower federal courts.

3. The claim of the United States, for priority of payment out of the assets in the hands of the respondent administratrix, is founded on the express provisions of federal statutes (R. S. secs. 3466, 3467, 31 U. S. C., secs. 191–192), and the immunity of the United States from the defense of state statutes of limitations or laches is implied in every federal enactment. *Board of County Commissioners, Jackson County, Kansas* v. *United*

[2] *United States* v. *Hailey*, 2 Idaho 26, is not opposed. That case merely held that a provision of a state statute that recovery could not be had against an administrator unless the claim had previously been presented to the administrator was binding on the United States. The question whether the limitation of time for presentation bound the Government was expressly distinguished (*id.* 29).

*States*, 308 U. S. 343.[3] But it is immaterial whether the right asserted is founded on an act of Congress or on a claim acquired pursuant to a federal enactment but owing its force and effect to the law of the State of Florida. The United States enjoys immunity from state statutes of limitations or laches in either case. The Government's immunity extends, for example, to suits to recover on bonds

[3] The petition and proof of claim recited that the claim was "a debt due and owing the United States of America within the meaning of section 191 and section 192 of Tit. 31, U. S. C. A., and that the same is, therefore, a preferred claim against the Estate of the said J. F. Andrew, deceased * * *" (R. 3). The note in controversy was assigned to the Federal Housing Administrator "acting on behalf of the United States of America" (R. 8). The petitioner's claim is thus founded on a debt "due to the United States" within the meaning of R. S. sections 3466–3467. *Wagner* v. *McDonald*, 96 F. (2d) 273 (C. C. A. 8th); *In re Dickson's Estate*, 197 Wash. 145. Respondents substantially so conceded in their brief filed in the court below.

Moreover, without regard to R. S. sections 3466, 3467, the right to collect the sum owing on the note from decedent's estate, while embodied in a state statute, is attributable to the law of the United States which authorized the acquisition of the note. The extent of the contractual obligation, to be sure, is defined by the law of Florida, the state in which the note was executed and delivered. See *Pufahl* v. *Estate of Parks*, 299 U. S. 217; cf. *Keyser* v. *Hitz*, 133 U. S. 138, 150–152. But Congress may constitutionally provide a remedy for the enforcement of all rights belonging to the United States, whether created by federal enactment or merely acquired pursuant thereto, and the remedies available for the collection of the claim in controversy may therefore be attributed to the law of the United States. Cf. *Board of County Commissioners, Jackson County, Kansas* v. *United States*, *supra*.

or shares of stock executed pursuant to state law but acquired by the United States in the performance of federal functions (*United States* v. *Nashville, Chattanooga & St. L. Ry. Co.*, 118 U. S. 120, 125; *Chesapeake & Delaware Canal Co.* v. *United States*, 250 U. S. 123), to suits to enforce the liability of transferees of corporate assets, whether or not the liability of the transferee was created by local law (*Phillips* v. *Commissioner*, 283 U. S. 589, 602), and to suits to try title to realty (cf. *Stanley* v. *Schwalby*, 147 U. S. 508, 514–517), to enforce an equity of redemption after foreclosure (*United States* v. *Insley*, 130 U. S. 263), or to recover for negligent injury to realty (*Davis* v. *Corona Coal Co.*, 265 U. S. 219), although the title to the property is in each instance founded on state law. Indeed, so far as we have been able to ascertain, only once has the contention been advanced in this Court that the United States is bound by state statutes of limitations when asserting a right created by the local law, and in that case the contention was summarily rejected by this Court. *Phillips* v. *Commissioner*, *supra*.

While the rule and its application are thus well-settled by the decisions of this Court, the conclusion should be the same even if the question were now presented as one of first impression. In *Board of County Commissioners, Jackson County, Kansas* v. *United States*, 308 U. S. 343, 351, this Court observed: "* * * the immunity of the sovereign

from these defenses is historic. Unless expressly waived, it is implied in all federal enactments." Since the benefit and advantage of the rule extend to all the public, to the states and individuals whose plea of laches or limitations it precludes as well as to the United States, the immunity should apply whether the right asserted is created by a federal statute or is merely acquired pursuant thereto but founded on the law of a state. Cf. *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 132–133, 135. The "great public policy of preserving public rights, revenues, and property from injury and loss, by the negligence of public officers" (per Story J. in *United States* v. *Hoar*, *supra*, 2 Mason at 314, 26 Fed. Cas. at 330) forcibly suggests that the immunity impliedly contained in all federal enactments was intended by the Congress to protect the interest of the United States in either case. The immunity here asserted is thus an implied provision of the National Housing Act,[1] pursuant to which the note in controversy was acquired, and applies with equal force whether the right asserted is one created by that statute or other federal enactment, or is acquired in the exercise of a federal function but founded on the law of the states. In this view, it is immaterial whether the right to be paid out of the assets of a

[1] Act of June 27, 1934, c. 847, 48 Stat. 1246, Title I, as amended by the Act of August 23, 1935, c. 614, 49 Stat. 684, 722, and the Act of February 3, 1938, c. 13, 52 Stat. 8, 12 U. S. C. Supp. V, secs. 1701–1705.

decedent's estate in Florida is one created by the local common law or is a creature of state statute. Cf. *Phillips* v. *Commissioner*, 283 U. S. 589, 602; *United States* v. *Minor*, 235 Fed. 101 (C. C. A. 4th); *United States* v. *Kendall*, 263 Fed. 126 (D. C. La.); but cf. *United States* v. *Harpootlian*, 24 F. (2d) 646 (C. C. A. 2d); *Denver & R. G. R. Co.* v. *United States*, 241 Fed. 614 (C. C. A. 8th); *United States* v. *Miller*, 28 F. (2d) 846 (C. C. A. 8th); *Thompson* v. *Avery*, 11 Utah 214.[5]

[5] The record does not disclose whether the decedent's estate in Florida consisted of personalty or realty or both. At common law the personal property of a decedent was charged with the payment of his debts (*Snelling's Case*, 5 Co. Rep. 82b; *Norwood* v. *Read* (1557) Plowden 180; *Pinchon's Case* (1612) 9 Co. Rep. 86b), but, for reasons peculiar to the feudal system, the realty was not subject to such charge save in a narrow class of cases. Schouler, *Executors and Administrators* (1883), sec. 212. The distinction has been abolished by statute in almost every state in the Union. *Schouler, loc. cit. supra.*

The fact that the right here asserted may be one which the State of Florida was theoretically at liberty to grant or withhold does not determine the scope of the Government's immunity, whether viewed as an incident of the Government's constitutional sovereignty or as an implied provision of the federal enactment pursuant to which the note in controversy was acquired. Thus the jurisdiction of the federal courts with respect to controversies founded on rights created by state statute is controlled by the Federal Constitution, and the states are without power to confer exclusive jurisdiction on the local courts in such cases. *Railway Company* v. *Whitton*, 13 Wall. 270; *Dennick* v. *Railroad Company*, 103 U. S. 11; *Traction Company* v. *Mining Company*, 196 U. S. 239; cf. *Suydam* v. *Broadnax*, 14 Pet. 67; *Lawrence* v. *Nelson*, 143 U. S. 215; *Security Trust*

4. The court below recognized that a general state statute of limitations could not be applied to the claim of the United States (R. 23), but concluded that "a statute of non claim for the orderly and expeditious settlement of the estates of decedents" was governed by a different principle. The constitutional immunity of the United States may not be defeated, however, by a state policy to make "expeditious settlement of estates" any more than by the state policy, embodied in general statutes of limitation, to "protect the citizens from stale and vexatious claims." *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 136.

The Florida non-claim statute, like those of other states, differs from general statutes of limitations in only two respects. See Note, 36 Mich. L. Rev. 973, 974–975. First, the statutory period of eight months is considerably shorter than that provided by most general statutes of limitations. This distinction would seem to suggest, however, that the reasons of public policy which underlie the sovereign immunity apply with even greater force to

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*Co.* v. *Black River National Bank*, 187 U. S. 211. And the decisions of this Court establish that, in conformity with historic precedent, the United States may take the benefit of state statutes though it is not bound by the limitations contained therein. Cf. *Stanley* v. *Schwalby*, 147 U. S. 508, 514–517. The scope of the Government's immunity arising under the laws of the United States is accordingly to be determined by the federal purpose and policy which it is intended to serve and is not affected by the fact that the particular right in controversy is one created by state statute.

such a statute than to general statutes of limitation. Secondly, the Florida statute provides that claims not filed in the office of the County Judge within eight months "shall be void."[6] As this Court observed with respect to a similar distinction suggested in *Davis* v. *Mills*, 194 U. S. 451, "it is quite incredible" that the scope of the Government's immunity should depend on "such an unsubstantial distinction * * *" (*id.* 456). Moreover, the United States is not bound by state statutes limiting the period in which title to real estate may be asserted (*Gibson* v. *Chouteau*, 13 Wall. 92; *United States* v. *Insley*, 130 U. S. 263; *Stanley* v. *Schwalby*, 147 U. S. 508, 514–517), even though such statutes, as against private individuals, extinguish the right as well as the remedy. *Campbell* v. *Holt*, 115 U. S. 620, 623; *Stewart* v. *Keyes*, 295 U. S. 403, 416–417.

As appears from a prior opinion in a related case,[7] the court below may have viewed the Florida non-claim statute as a regulation of the procedure

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[6] Most non-claim statutes provide that claims not filed within the statutory period "shall be forever barred." See Note, 36 Mich. L. Rev. 973.

[7] In *Brooks* v. *Federal Land Bank*, 106 Fla. 412, the Florida Supreme Court observed (p. 422):

> A statute of non-claim while partaking of the nature of a statute of limitations is not wholly such. It constitutes part of the procedure of court, the orderly, expeditious, and exact settlement of the estates of decedents and constitutes part of the procedure which courts must observe in the settlement of estates of deceased persons and where no exemptions from the provisions of the statute exist the court is powerless to create one.

or jurisdiction of the local courts in the probate of estates, a subject in general within the exclusive control of Florida.[8] The conclusive answer is that the state courts are bound to give effect to any immunity arising under the laws of the United States when asserted in a case within their jurisdiction, and this duty cannot be evaded upon the ground that the immunity conflicts with a state statute regulating procedure or jurisdiction of the local forum. In *Davis* v. *Corona Coal Co.*, 265 U. S. 219, 223, this Court, speaking through Mr. Justice Holmes, said:

> If the section of the Louisiana Code after the limitation that it expresses went on to say that the United States is forbidden to sue in the courts of the State upon such claims over a year old, although but for this limitation it might, the exception could not be maintained. * * *

It may be observed in passing that the states cannot limit jurisdiction with respect to the proof of claims against administrators or executors to the state courts to the exclusion of the federal courts. *Lawrence* v. *Nelson, supra.*

5. The court below sought to support the application of the Florida non-claim statute to the United States upon the ground that the Government's claim was acquired in the operation of a "commercial enterprise." The court said (R. 23):

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[8] See "Limitations on the Power of the States to control the Jurisdiction of Their Courts" (1934), 34 Columbia L. Rev. 1116.

> In this holding, we have not overlooked the cases cited by appellant. They have been read but they do not apply to statutes such as we are confronted with in this case. They treat rather the application of statutes of limitations which in many instances do not apply to State or Federal governments. Neither are such governments bound by laches or estoppel but such rules are not involved in this case. When governmental entities depart from their sovereign function and compete with private citizens in business, they should be bound by the same rules.

It is not clear from the opinion whether the court below regarded as material the circumstance that the Government's claim was founded on a note, negotiable prior to default on maturity, or relied solely on the fact that the note was acquired in the conduct of an insurance "business." In either event, the court's position is untenable.

The court cited *Cooke* v. *United States*, 91 U. S. 389, and *United States* v. *Barker*, 12 Wheat. 559, which formulate the rule that "when the United States become parties to commercial paper, they incur all the responsibilities of private persons under the same circumstances." (91 U. S. at 396). This principle obviously has no application here. The rules of the law merchant are designed to promote the marketability of commercial paper, and the United States impliedly intends to be bound thereby for the reason that "from the daily and

unavoidable use of commercial paper by the United States, they are as much interested as the community at large can be, in maintaining these principles." *United States* v. *Bank of Metropolis*, 15 Pet. 377, 392. The reach of the doctrine of the *Cooke* case extends no further than the reason underlying it, and it has no application, therefore, to suits against the maker to recover on negotiable instruments after maturity. In such cases, it is settled, the United States is not bound by state statutes of limitations. *United States* v. *Nashville, Chattanooga & St. L. Ry. Co.*, 118 U. S. 120, 124–125.

It is likewise immaterial that the Government's claim was acquired in its "business" of insuring loans for the construction or renovation of homes. So long as the function is one authorized by the Constitution, it is a "governmental" activity and the immunities of the United States are not defeated by characterizing the function as "proprietary", or as a "business." *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 477; *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 32.

*Chesapeake & Delaware Canal Co.* v. *United States*, 250 U. S. 123, would in any event foreclose in this case, any contention that the United States is barred by the state statute because it acquired the note in a "business". In that case the United States, a stockholder in the defendant corporation, sued to recover dividends. The state statute of limitations was invoked as a bar to the action. The defendant's principal contention was that the

Government, by becoming a stockholder in a private corporation, had waived its governmental immunity and was bound by state statutes of limitations to the same extent as a private individual. Particular reliance was placed on *Bank of United States* v. *Planter's Bank*, 9 Wheat. 904, in which this Court held that a state's sovereign immunity from suit was not imparted to a private bank by reason of the fact that the state owned some of the stock of the bank, and upon the familiar dictum of Chief Justice Marshall that, "when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates and to the business which is to be transacted." (*Id.* 907.) The Court rejected the contention and observed (250 U. S. at 126):

> If the Government were asserting any rights with respect to the conduct of the corporation's affairs, its contracts or its torts, then its rights, duties and privileges would be no greater than those of any stockholder. *Bank of the United States* v. *Planters' Bank*, 9 Wheat. 904, 907. But here the Government is pursuing a right to recover, which is not affected by its relation to the corporation as a stockholder. The declaration of the dividends, which is admitted, gave it

> the status of a creditor of the company, and thereafter, the right to recover was unaffected by any stockholder relation. To this must be added that the statutes and rules of limitation relate to the remedy to enforce the right, and not to the corporate relation from which the right springs, and that, since these dividends constituted "public money" applicable to public purposes only, the Government in collecting them was acting in its governmental capacity as much as if it were collecting taxes, such as those with which, no doubt, the stock which produced the dividends was purchased.

The Circuit Court of Appeals in the same case observed (223 Fed. 926, 928):

> The Delaware statute is not specially concerned with the rights of stockholders as such, it is dealing with the rights of creditor plaintiffs, no matter how such rights have been acquired * * *

A similar observation may be made with respect to the contention here advanced. So far as expeditious liquidation of estates is concerned, which is the end to which the non-claim statute is directed, it is immaterial whether the claims are based on commercial paper or derived from some other source, and it is immaterial what was the precise nature of the federal activity which gave rise to the claim. Certainly, the Florida statute makes no distinction between different types of claims.

6. No contention is or could be made that the provision of the National Housing Act authorizing

the Federal Housing Administrator to "sue and be sued" constitutes a waiver of the immunity of the United States from state statutes of limitations or laches. This provision was no doubt intended to limit legal irresponsibility of the United States as a defendant, but it in no way relates to the immunity of the United States or its agencies as a plaintiff. Cf. *Dupont de Nemours & Co.* v. *Davis*, 264 U. S. 456. Moreover, the claim here asserted is admittedly founded on a debt owing to the United States, and the waiver of immunity as to the Federal Housing Administrator does not extend to claims of the United States, even though acquired from or through the Federal Housing Administration. Cf. *Federal Housing Administration* v. *Burr*, No. 354, this Term, decided February 12, 1940; *United States* v. *Shaw*, No. 570, this Term, decided March 25, 1940.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the court below should be reversed.

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FRANCIS M. SHEA,
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APRIL, 1940.

# APPENDIX

R. S. § 3466, 31 U. S. C., sec. 191:

> Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

R. S. § 3467, 31 U. S. C., sec. 192:

> Every executor, administrator, or assignee, or other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.



U. S. GOVERNMENT PRINTING OFFICE: 1940

No. 715

# IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

THE UNITED STATES OF AMERICA
PETITIONER

v.

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE OF J. F. ANDREW, DECEASED

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

## BRIEF FOR THE RESPONDENT

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## BRIEF FOR THE RESPONDENT

### OPINIONS BELOW

The brief of the United States correctly states the opinions below.

### JURISDICTIONS

The brief of the United States correctly states the jurisdiction.

### QUESTION PRESENTED

Correctly stated by brief for the United States.

## STATUTE INVOLVED

Correctly stated by brief for the United States.

## SUMMARY OF ARGUMENT.

Almost the entire brief of the United States is used up in citing authorities to the effect that the United States is not bound by statutes of limitations and common law doctrines of laches, and with these authorities, I have no argument because it has been admitted by the respondent throughout all of the litigation in the State courts and will be admitted by respondent in this Court, that the United States is ordinarily not bound by statutes of limitations or common law doctrines of laches, and it has further been admitted by respondent that Federal Housing Authority is constitutional, and that the United States is the owner of the claim.

The only contention of respondent is that the statute in question, Section 5541 (92) Permanent Supplement Compiled General Laws of Florida (1927), amounts in law to a rule of procedure and is not a statute of limitations, United States of America v. Arlene Summerlin, as ancillary administratrix of the Estate of J. F. Andrew, deceased, 191 So. 842, and all of the argument and authorities we cite herein are on this question, as respondent feels that this is the only question before this court on this hearing.

And that the United States is as much bound by this rule of procedure contained in the above statute as any other individual would be in this case.

## ARGUMENT.

THE CLAIM OF THE UNITED STATES IS BARRED BY THE FAILURE TO FILE WITHIN THE PERIOD PRESCRIBED BY THE FLORIDA STATUTE ITS PROOF OF CLAIM IN THE PROBATE COURT OF POLK COUNTY, FLORIDA.

1. It is well settled that the United States Courts are bound by the construction of a State statute made by a court of last resort in such State. Erie R. R. Co. v. Tompkins, 58 Sup. Ct. 817; State of Minnesota, ex rel, Pearson v. Probate Court of Ramsey County, Minnesota, et al, 60 Sup. Ct. 523.

This statute in question has been so construed by the Supreme Court of Florida in several instances, United States v. Arlene Summerlin, etc. 191 So. 842; Brooks v. Federal Land Bank, 106 Fla. 412; 143 So. 749; Cumberland & Liberty Mills v. Keggins, 190 So. 492.

2. So, we find that the question now before this Court to determine is the United States bound by this rule of procedure in the State of Florida when the United States comes into the State Court of its own motion. If this question has ever been decided by the Supreme Court of the United States, I have been unable to find such decision, but the Supreme Court of the United States has held that

> Wherever the Government of the United States through its lawful authorized agents becomes the holder of a bill of exchange, it is bound to use the same diligence in order to charge the endorser as in a transaction be-

tween private individuals, United States v. Barker, 12 Wheaton, 559; 25 U. S. 559 * * *.

This case has never been overruled or in any way modified so far as I can determine and this principle of law was set down in even stronger language by the Supreme Court of the United States in the case of Cooke, et al, v. United States, 91 U. S., 389; The Floyd Acceptances, 7 Wall. 666; 74 U. S. 666; United States v. Bank of Metropolis, 15 Peters, 377; 40 U. S. 377.

These cases very definitely hold that the United States is bound by rules of procedure on commercial paper and that the rights of the United States can be lost by failure to observe these rules.

3. Government counsel in their brief admit that these decisions of the Supreme Court of the United States are good law, and are still in full force and effect, but contend the decisions have no application here because the rules of the law merchant are designed to promote the marketability of commercial paper, and the United States impliedly intends to be bound thereby for the reason that from the daily unavoidable use of commercial paper by the United States, they are as much interested as the community at large can be in maintaining these principles (Government Brief PP 17 & 18.)

The extent to which the Government and agencies guaranteed by the Government is now dealing in real estate and personal property throughout the country renders this argument futile for the United States is now as much interested in the title to real estate and personal prop-

erty as it is or ever has been in commercial paper and therefore, it is as much to the interest of the United States to follow the rules of procedure with reference to real estate and personal property as it can be to any other person.

4. It will be noted that the Florida Statute of non-claim does not provide for the suing or enforcement of claims required to be filed, and therefore it is no more vexatious or troublesome for the Government to comply with the statute than it was for the Government to comply with the law merchant rules, to give notice on dishonored bills of exchange.

5. It is admitted by opposing counsel that if the Government is not required to file its claim in the Probate Court under this statute within the eight months period, that the United States cannot be required to file its claim in the Probate Court at any time, and the attempted filing of the claim in the Probate Court of Polk County, Florida, was a useless act and served no useful purpose, if the contention of counsel for the United States is correct.

If this is true, then there can be no such thing as orderly or complete administration of estates of decedents in Florida, for however careful the legal representatives of the estate of the decedent might inquire, they could never be certain that they had determined the United States held no claim against the estate.

The heir would take the property of his ancestor subject to this cloud of suspicion and would thus own the property of his ancestor throughout all future time.

6. In Florida, as doubtless in other States, there are untold thousands of obligations due the United States or its duly accredited agencies, which gives the obligation all of the sanctity of an obligation held by the United States, and all of which are purely commercial in nature, and no part of which are due the United States as taxes of any nature or kind whatsoever. If the United States is not required to file notice of these claims held by it and its accredited agencies against the estates of decedents, the administration of estates in Florida will cease to be orderly and in effect will be without result.

## CONCLUSION.

Because of the law and facts set forth in the foregoing argument, it is respectfully submitted that the decision of the Court below should be affirmed.

ASBURY SUMMERLIN, Attorney for Arlene Summerlin, as ancillary administratrix of the estate of J. F. Andrew, deceased.

# SUPREME COURT OF THE UNITED STATES.

No. 715.—October Term, 1939.

The United States of America, Petitioner, *vs.* Arlene Summerlin, as Ancillary Administratrix of the estate of J. F. Andrew, deceased. } On Writ of Certiorari to the Supreme Court of the State of Florida.

[May 27, 1940.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

By a series of transactions, which it is unnecessary to review, the Federal Housing Administrator, acting on behalf of the United States, became the assignee of a claim against the estate of one J. F. Andrew, deceased. Respondent was appointed ancillary administratrix of that estate by the County Judge of Polk County, Florida. Respondent, on August 13, 1937, gave notice by publication to the creditors of the estate to file proof of their claims within eight months as required by the state statute.

The United States filed its claim in the office of the County Judge on July 1, 1938, with a petition asking that the claim be allowed with the priority accorded by the federal statutes (31 U. S. C. 191, 192) and also asserting that the state statute as to the time for filing claims did not apply to claims of the United States. The County Judge denied the petition, holding that the state statute was applicable and further adjudging that the claim of the United States be "disallowed as a claim against the estate" of the decedent.

The United States appealed to the Circuit Court for Polk County, where the order of the County Judge was in all respects affirmed. The judgment explicitly declared the claim of the United States to be "void", because not filed within the time prescribed. An appeal to the Supreme Court of Florida resulted in affirmance of the judgment of the Circuit Court. 191 So. 842. We granted certiorari because of the importance of the question. March 25, 1940.

The statute of Florida (Section 5541 (92) Compiled General Laws of 1927) provides:

"No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee, or devisee of the decedent unless the same shall be in writing and contain the place of residence and post office address of the claimant and shall be sworn to by the claimant, his agent or attorney and be filed in the office of the county judge granting letters. Any such claim or demand not so filed within eight months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise: . . . .

The claim assigned to the Federal Housing Administrator acting on behalf of the United States became the claim of the United States, and the United States thereupon became entitled to enforce it. Act of June 27, 1934, 48 Stat. 1246. Compare *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 477; *Pittman* v. *Home Owners Loan Corporation*, 308 U. S. 21, 32, 33.

It is well settled that the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights. *United States* v. *Thompson*, 98 U. S. 486; *United States* v. *Nashville, Chattanooga & St. Louis Ry. Co.*, 118 U. S. 120, 125, 126; *Stanley* v. *Schwalby*, 147 U. S. 508, 514, 515; *Guaranty Trust Company* v. *United States*, 304 U. S. 126, 132; *Board of Commissioners* v. *United States*, 308 U. S. 343, 351. The same rule applies whether the United States brings its suit in its own courts or in a state court. *Davis, Director General of Railroads* v. *Corona Coal Co.*, 265 U. S. 219, 222, 223.

We are of the opinion that the fact that the claim was acquired by the United States through operations under the National Housing Act does not take the case out of this rule. The state court treated the case as in the same category as one of "statutes providing for conveyancing and marketing negotiable instruments, and conducting other business relations". But this is not a case relating to the application of the law merchant as to the transfer of negotiable paper and the diligence necessary to charge an endorser or as to the meaning by the United States of certain responsibilities by becom-

ing a party to such paper. *United States* v. *Barker*, 12 Wheat. 559; *Cooke* v. *United States*, 91 U. S. 389, 396. Even as a holder of such paper, as *e.g.* negotiable bonds, the United States suing the maker is not bound by a state statute of limitations. *United States* v. *Nashville, Chattanooga & St. Louis Ry. Co.*, *supra*. When the United States becomes entitled to a claim, acting in its governmental capacity and asserts its claim in that right, it cannot be deemed to have abdicated its governmental authority so as to become subject to a state statute putting a time limit upon enforcement. *Chesapeake & Delaware Canal Company* v. *United States*, 250 U. S. 123, 126, 127.

The state court, however, has said that the statute in question is not a statute of limitations, but rather a statute of "non-claim" for the orderly and expeditious settlement of decedents' estates. Presumably the court refers to the provision of the statute that if a claim is not filed within the specified period "it shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise".

If this were a statute merely determining the limits of the jurisdiction of a probate court and thus providing that the County Judge should have no jurisdiction to receive or pass upon claims not filed within the eight months, while leaving an opportunity to the United States otherwise to enforce its claim, the authority of the State to impose such a limitation upon its probate court might be conceded. But if the statute, as sustained by the state court, undertakes to invalidate the claim of the United States, so that it cannot be enforced at all, because not filed within eight months, we think the statute in that sense transgressed the limits of state power. *Davis, Director General of Railroads* v. *Corona Coal Company*, *supra*.

Mr. Justice Story had occasion to consider the application to the Government of a state statute purporting to bar claims against decedent's estates in *United States* v. *Hoar*, 2 Mason 311. There an action was brought by the United States against an administrator of an estate and the defendant pleaded the general statute of limitation of Massachusetts as to personal actions and also the particular statute limiting suits against executors and administrators to four years after the acceptance of the trust. Mr. Justice Story

thought it clear that the defense of these statutes of limiations could not avail. The question whether a further defense of *plene administravit* was good, that is, whether a distribution of surplus assets after the payment of all known debts among the heirs, either voluntary or under a probate decree, would protect the administrator from suit by the United States, it was thought not necessary to decide. Nor have we such a question here.

We hold that the state statute in this instance requiring claims to be filed within eight months cannot deprive the United States of its right to enforce its claim; that the United States still has its right of action against the administrator, even though the probate court is to be regarded as having no jurisdiction to receive a claim after the expiration of the specified period.

So far as the judgment goes beyond the question of the jurisdiction of the probate court and purports to adjudge that the claim of the United States is void as a claim against the estate of the decedent because of failure to comply with the statute, the judgment is reversed.

The cause is remanded for further proceedings not inconsistent with this opinion.

*It is so ordered.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*